

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ISAAC ANTHONY ESGUERRA,

Plaintiff,

v.

No. CV 08-00782 WJ/LFG

DONA ANA COUNTY CORRECTION CENTER,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6), to review Plaintiff's civil rights complaint filed on August 27, 2008. Plaintiff was incarcerated when he filed the complaint. He states that he has since been released, although he has not notified the Clerk of his current address. The docket indicates that Plaintiff's address is the New Mexico Penitentiary. Plaintiff appears pro se and has moved for leave to proceed in forma pauperis. For the reasons below, Plaintiff's claims against the named Defendant will be dismissed.

The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under §1915(e)(2) "at any time if . . . the action . . . is frivolous or malicious; [or] fails to state a claim on which relief may be granted." The Court also may dismiss a complaint *sua sponte* under Fed. R. Civ. P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (quoting *McKinney v. Oklahoma, Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 127 S.

Ct. 1955, 1974 (2007). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but liberally construes the allegations. *Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

The complaint alleges that Plaintiff was denied adequate medical treatment for a serious condition. Plaintiff refers to, but does not identify, a nurse who allegedly lied to him and refused to treat an infection in his leg. The complaint seeks damages and certain equitable relief.


Although Plaintiff states that he has names of persons involved, the only named Defendant is the Dona Ana County Correction Center. "[T]he district court properly dismissed [Plaintiff]'s suit against the . . . County Jail." *White v. Utah*, 5 F. App'x 852, 853 (10th Cir. 2001). "Dismissal against this entity was . . . required because a detention facility is not a person or legally created entity capable of being sued." *Aston v. Cunningham*, No. 99-4156, 2000 WL 796086, at \*4 n.3 (10th Cir. June 21, 2000). The Court will dismiss claims against Defendant Dona Ana County Correction Center and allow Plaintiff to amend his complaint, specifically identifying the individual(s) allegedly responsible for the violations. Failure to file an amended complaint specifically identifying a party may result in dismissal of this action.

IT IS THEREFORE ORDERED that Plaintiff's motions for leave to proceed in forma pauperis (Docs. 2 and 5) are GRANTED;

IT IS FURTHER ORDERED that Plaintiff's claims against Defendant Dona Ana County Correction Center are DISMISSED with prejudice; Defendant Dona Ana County Correction Center is DISMISSED as a party to this action; and, within fifteen (15) days from entry of this order, Plaintiff may file an amended complaint specifically identifying the individual(s) responsible for the alleged violations;

IT IS FURTHER ORDERED that the Clerk is directed to send copies of this Order to

Plaintiff at the address shown on the docket and c/o 4009 Jewel Ct., Las Cruces, NM 88012.



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UNITED STATES DISTRICT JUDGE